IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9556 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PARMAR HARSHADKUMAR AMTHABHAI - Petitioner(s)
Versus
THE STATE OF GUJARAT & 3 - Respondent(s)

==========

Appearance :
MS LAXMI C NAINANI for Petitioner(s) : 1,
MR KRUNAL PANDYA, AGP for Respondent(s) : 1, 2, 3
MR MAHESH BHAVSAR for Respondent(s) : 4.

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 09/08/2007

ORAL JUDGMENT

Rule. Service of rule is waived by Mr. Krunal Pandya, Ld. AGP and Mr. Mahesh Bhavsar, learned advocate on behalf of respondents no. 1 to 3 and respondent no. 4 respectively. At the request of learned advocates for the

parties, matter is taken up for final hearing today.

2. The petitioner has challenged order of respondent no. 1 dated 25/1/2007 passed in Appeal No. 36/2006, whereby appeal of respondent no. 4 has been allowed and he has been allotted the fair price shop meant for village Mandali, Taluka Kheralu. It is the say of the petitioner that he is an educated unemployed and he possesses all the requisites for allotment of fair price shop under the scheme known as "Pandit Din Dayal Grahak Bhandar Yojna". He is better qualified than respondent no. 4. However, respondent no. 1 has wrongly cancelled the allotment granted in favour of the petitioner by respondent no. 2 and has allotted the shop to respondent no. 4.

3. I have heard Ms. Laxmi Nainani, learned advocate for the petitioner, Mr. Krunal Pandya, Ld. AGP for respondents no. 1 to 3 and Mr. Bhavsar, learned advocate for respondent no. 4. It is submitted by Ms. Nainani that the degree obtained by the petitioner is equivalent to B.A. The petitioner possessed 57%, whereas respondent no. 4 possessed 46%. According to her, when all things are equal, the difference in percentage of marks will tilt the balance in favour of the petitioner. She has, therefore, submitted that the impugned order be quashed.

3.1. As against that, Mr. Bhavsar has submitted that the petitioner possesses all the requirements under the scheme and that has been duly taken into consideration by respondent no. 1 while allowing the appeal and making allotment in favour of respondent no. 4. Mr. Pandya has also tried to support

the order of respondent no. 1.

4. I have given careful consideration to the submissions as well as the record of the petition. The impugned order though it states that respondent no. 4 possessed the qualifications as required in the scheme, it no-where states that the petitioner was lacking in it. On the contrary, order of respondent no. 2 showed that the petitioner was better qualified. If the things are equal, naturally petitioner would stand better footing and that has been done by the Collector. However, respondent no. 1 has not assigned any reason, holding that the petitioner is not qualified or entitled to receive allotment or the allotment given in his favour is required to be cancelled. In view of the same, tis order is required to be quashed and set aside to enable respondent no. 1 to reconsider the entire issue. Hence the impugned order dated 25/1/2007 passed by respondent no. 1 is quashed and set aside. The matter is remitted to respondent no. 1 for his reconsideration. He will permit the parties to produce additional material, if necessary and also to raise all the contentions permissible in law and in facts and decide these contentions on their merits. The entire exercise to be completed on or before 31st December, 2007. In the meanwhile, possession of respondent no. 4 would not be disturbed.

With the aforesaid, petition stands disposed of accordingly.

[Akshay H Mehta, J.]

* Pansala.